

**AMENDMENTS TO THE DRAWINGS**

The attached sheet of drawings includes changes to Fig. 1. This sheet includes Fig. 1 and replaces the original sheet including Fig. 1. In amended Fig. 1, arrow line ends have been added to connections 16, 52, and 56 to indicate the possibility of bi-directional data flow.

Attachment:

Replacement sheet

Annotated sheet showing changes

## **REMARKS**

### **STATUS**

Claims 1-44 remain in the application. Claims 45-54 have been added in order to more clearly describe the invention recited in claim 1 and do not add any new matter. Claims 1, 4, 7-12, 14, 16, 21-23, 29, and 42 are currently amended.

In amended Figure 1, arrow line ends have been added to connections 16, 52, and 56 to indicate the possibility of bi-directional data flow. Support for this amendment can be found in Fig. 1 which was submitted in the United States Provisional Patent Application Serial No. 60/214,219, entitled "Integrated Patient and Enterprise Health Record System," filed June 26, 2000, the disclosure of which was expressly incorporated by reference in the present application.

The invention set forth by claims 1-5, 8-27, and 30-44 are alleged not to meet the requirements of 35 U.S.C. §102(e) as being anticipated by U.S. Patent. No. 6,757,898 to Ilsen et al. (hereinafter "Ilsen"), claims 6 and 28 are alleged not to meet the requirements of 35 U.S.C. §103(a) as being unpatentable over Ilsen in view of U.S. Patent. No. 5,987,498 to Athing et al., and claims 7 and 29 are alleged not to meet the requirements of 35 U.S.C. §103(a) as being unpatentable over Ilsen in view of U.S. Patent. No. 6,725,200 to Rost. The applicants respectfully traverse the allegations and respond as follows.

### **CLAIMS 1-54 MEET THE REQUIREMENTS OF SECTIONS 102(b) AND 103(a)**

The first issue of patentability raised by the Office action, and which the applicants must overcome, is whether each and every limitation of claims 1-5, 8-27, and 30-44 is found in Ilsen. The second issue of patentability raised by the Office action concerns the combination of Ilsen in view of Athing et al., and whether the combination renders unpatentable claims 6 and 28 under 35 U.S.C. §103(a), as well as the combination of Ilsen in view of Rost, and whether that combination renders unpatentable claims 7 and 29 under 35 U.S.C. §103(a). The applicants submit that claims 1-54 meet the requirements of both 35 U.S.C. §102(a) and 35 U.S.C. §103(a), and therefore, claims 1-54 are allowable. Applicants address the rejections separately as to each independent claim and the claims that depend therefrom.

**§ 102 Rejection based on Ilsen**

**Claims 1-5, 8-27, and 30-44**

Independent claim 1 as amended is directed to a system for providing a patient with access to a shared health record for that patient, where the system includes: a patient health record system including a machine readable media having a data structure, the data structure containing patient-created data; a communication network coupling the patient health record system with a patient interface, the patient interface providing the patient with access to the patient health record system via the communication network, wherein the patient health record system is adapted to be securely coupled in real-time to an enterprise health record system for providing access by the patient health record system to patient-related data for the patient retained within the enterprise health record system. The patient interface is configured such that the patient may access the patient health record system for at least one of viewing, creating, or manipulating the patient-created data and for accessing the patient-related data from the enterprise health record system.

Ilsen generally discloses an automated communication system for placement between a health-care provider and a number of patients. The Ilsen system is focused at a physician's front office and uses a sweeper program to pull data from multiple systems within the health-care provider and copies that data to a separate database. *Ilsen*; Col. 10, lines 20-22; Col. 18, lines 11-20; and Figs. 8 and 9. The sweeper program pulls the data by extracting billing codes from medical databases within the health-care provider. *Id.* at Col. 7, lines 59-64 and Col. 14, lines 17-30. Patients are then given access to the data that was copied to the separate database. This can be seen from Ilsen's disclosure that the functional requirements for its system include "a modular data collection program that receives information from doctors' or practitioners' scheduling and billing systems regarding patient visits, in a variety of different data and file formats, reformats the information, and stores it in the database;..." *Ilsen*; Col. 5, lines 31-35. It is also noted that the separate database in Ilsen that patients can access is an external component to the hospital or organization, rather than part of the healthcare enterprise.

While discussed in greater detail below, the system disclosed in Ilsen teaches away from the system recited in pending claim 1. The Ilsen inventors specifically distinguished their system from the type of system created by the inventors of the present application. It is

stated in the Background section of Ilsen that “[c]ompanies that sell in-house systems for the back-office space, include medical record vendors, such as ... Epic ...” *Id. at Col. 1, lines 60-62* The inventors of Ilsen further stated that implementation of this back office solution:

has a high impact on the practice, because it requires a significant addition of resources and necessitates system and process modifications in the doctor's office, including substantial training of staff, integration and work process changes. Therefore, the back-office approach is tied to what have proven to be insurmountable problems involving additional time, cost and management expenditures for the practice.

*Id. at lines 51-59* The Ilsen inventors further stated that the type of system invented by Epic:

has a high impact on the operation of the doctor's office, and as a result will face significant hurdles before they can be adopted regardless of cost, delivery method or the like.

*Id. at Col. 1, line 67 – Col. 2, line 3* It is respectfully submitted that it is the inventors of the present application who were the first to conceive of a system that overcame the “insurmountable problems” and “significant hurdles” associated with the type of system referred to by the Ilsen inventors. That system is recited in pending claim 1, and in overcoming the significant hurdles Ilsen alludes to, provides an important differentiation from the model Ilsen envisions.

While the Ilsen system does disclose a web server that responds to requests from a user's web browser, it does not disclose a patient health record system adapted to be securely coupled in real-time to an enterprise health record system for providing access by a patient health record system to patient-related data for the patient retained within an enterprise health record system. Furthermore, Ilsen does not disclose a patient interface that is configured such that the patient may access the patient health record system to at least one of view, create, or manipulate patient-created data and to access the patient-related data from the enterprise health record system. In contrast, Ilsen discloses a practice office management system (POMS) sweeper program and parser plug-in module that pulls files and records from different entities' systems and then copies the information to a separate database that is accessible to a patient. *See Ilsen Figs. 8 and 9; Id. Col. 18, lines 11-20.* The Ilsen system thus creates a patient page in the patient accessible database by abstracting information from codes, such as billing codes. *Id. at Col. 7, lines 59-64 and Col. 14, lines 17-30.*

The abstraction of the codes in Ilsen requires mapping of codes to content and other items, which is prone to error, and is substantially different from allowing a patient to access their actual patient health record, as recited in pending claim 1. Ilsen specifically discloses that “[c]ustom mappings are established in the ePPi system between the practice's common visit codes, diagnoses codes and procedure codes, thereby permitting automatic delivery of content to the patient through the logic of the system.” *Ilsen Col. 4, lines 44-48*. The existence of the sweeper program and the mapping requirements are evidence of the fact that the Ilsen system is not integrated to an actual enterprise health record system and does not disclose a patient health record system adapted to be securely coupled in real-time to an enterprise health record system for providing access by a patient health record system to patient-related data for the patient retained within an enterprise health record system..

Ilsen also states that a particular scenario that was disclosed was:

not meant to depict all of the capabilities of the ePPi system, nor limit [ ] same. However, the scenario was specifically chosen to illustrate how the ePPi system uniquely maps data from the practice scheduling and billing systems, into information libraries, in order to deliver highly relevant content to patients based on their interaction with their doctor's office.

*Id. at Col. 14, lines 57-64*. As seen from the two statements quoted immediately above, the Ilsen system's need for mapping results in an inherent restriction to mapping only “common” information to the patient accessible database. This limitation is not present in the invention recited in claim 1 because it allows a patient access to his or her actual patient health record and eliminates the need for mapping.

There is also no disclosure whatsoever in Ilsen of coupling in real-time a patient health record system to an enterprise health record system, as included in the system recited in pending claim 1. In contrast, Ilsen discloses a system that runs in batches, such as once-a-day batches, and is never real-time. Ilsen specifically discloses that “[t]he repository is populated through the periodic receipt of data files from the practice's office management system (POMS)...” *Id. at Col. 30, lines 18-20*. The Ilsen system essentially cannot be real-time because it relies upon the sweeper program to extract information from reports and files from various POMS, and then selectively copy that information to a separate database that is accessible to patients. Ilsen particularly discloses that “these files must be exported from the POMS scheduling and billing systems, according to specifications that ensure that the files

can be read by the particular plug-in.” *Id. at Col. 37, lines 29-34*. Thus, Ilsen admits that its system must rely upon exported or extracted information. Therefore, neither in the section of Ilsen relied upon by the Examiner, nor in the whole of Ilsen, does it disclose a patient health record system adapted to be securely coupled in real-time to an enterprise health record system for providing access by a patient health record system to patient-related data for the patient retained within an enterprise health record system.

It should also be noted that the invention recited in amended claim 1 provides for the real-time coupling and access to the shared health record that is not disclosed in Ilsen. Thus, only the system recited in amended claim 1 provides complete accuracy between what a physician indicated and what the patients sees. Furthermore, the Ilsen system does not enable true internet based encounters between a patient and provider without the risk of information loss which could result in liability for the provider and compromised patient care.

Because no embodiment of Ilsen appears to disclose the invention recited in amended claim 1, it is submitted that amended claim 1 is not anticipated by Ilsen. In order for a claim to be anticipated under §102, the anticipating reference must disclose at least one embodiment that incorporates all of the claimed elements. *See for example, C.R. Bard, Inc. v. M3 Systems*, 48 U.S.P.Q.2d 1225, 1230 (Fed. Cir. 1998) (“When the defense of lack of novelty is based on a printed publication that is asserted to describe the same invention, a finding of anticipation requires that the publication describe all of the elements of the claims, arranged as in the patented device...”); *In re Bond*, 15 U.S.P.Q.2d 1566, 1567 (Fed. Cir. 1990) (“For a prior art reference to anticipate in terms of 35 U.S.C. §102, every element of the claimed invention must be identically shown in a single reference...These elements must be arranged as in the claim under review...”).

Therefore, the invention recited in independent claim 1 is not anticipated by Ilsen. It is respectfully submitted that claim 1, and claims 2-22 and 45-54 which depend therefrom, are allowable over the cited references.

#### **Claims 23-44**

Independent claim 23 is a method claim directed to providing patients with access to a shared health record for that patient. As acknowledged on page 6 of the Office action, claim 23 contains substantially similar method limitations to the system limitations of claim 1. In particular, claim 23 includes providing within a patient health record system a data structure.

containing patient-created data; coupling the patient health record system with a patient interface, the patient interface providing the patient with access to the patient health record system via a communication network; and securely coupling in real-time the patient health record system to an enterprise health record system for providing access by the patient health record system to patient-related data for the patient retained within the enterprise health record system.

Applicants respectfully submit that Ilsen does not disclose such a method. Specifically, Ilsen does not disclose coupling a patient health record system to an enterprise health record system for providing access by the patient health record system to patient-related data for a patient retained within the enterprise health record system, let alone doing so in real-time. For at least this reason, as well as the reasons discussed above with respect to claim 1, claim 23, and claims 24- 44 which depend therefrom, are not anticipated by any of the cited references.

### Conclusion

In view of the above, each of the presently pending claims in this application is believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to pass this application to issue. If there is any matter that the Examiner would like to discuss, the Examiner is invited to contact the undersigned representative at the telephone number set forth below. In any event, the Director is hereby authorized to charge any deficiency in the fees filed, asserted to be filed or which should have been filed herewith to our Deposit Account No. 13-2855, under Order No. 29794/36547A.

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Respectfully submitted,

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ANNOTATED SHEET

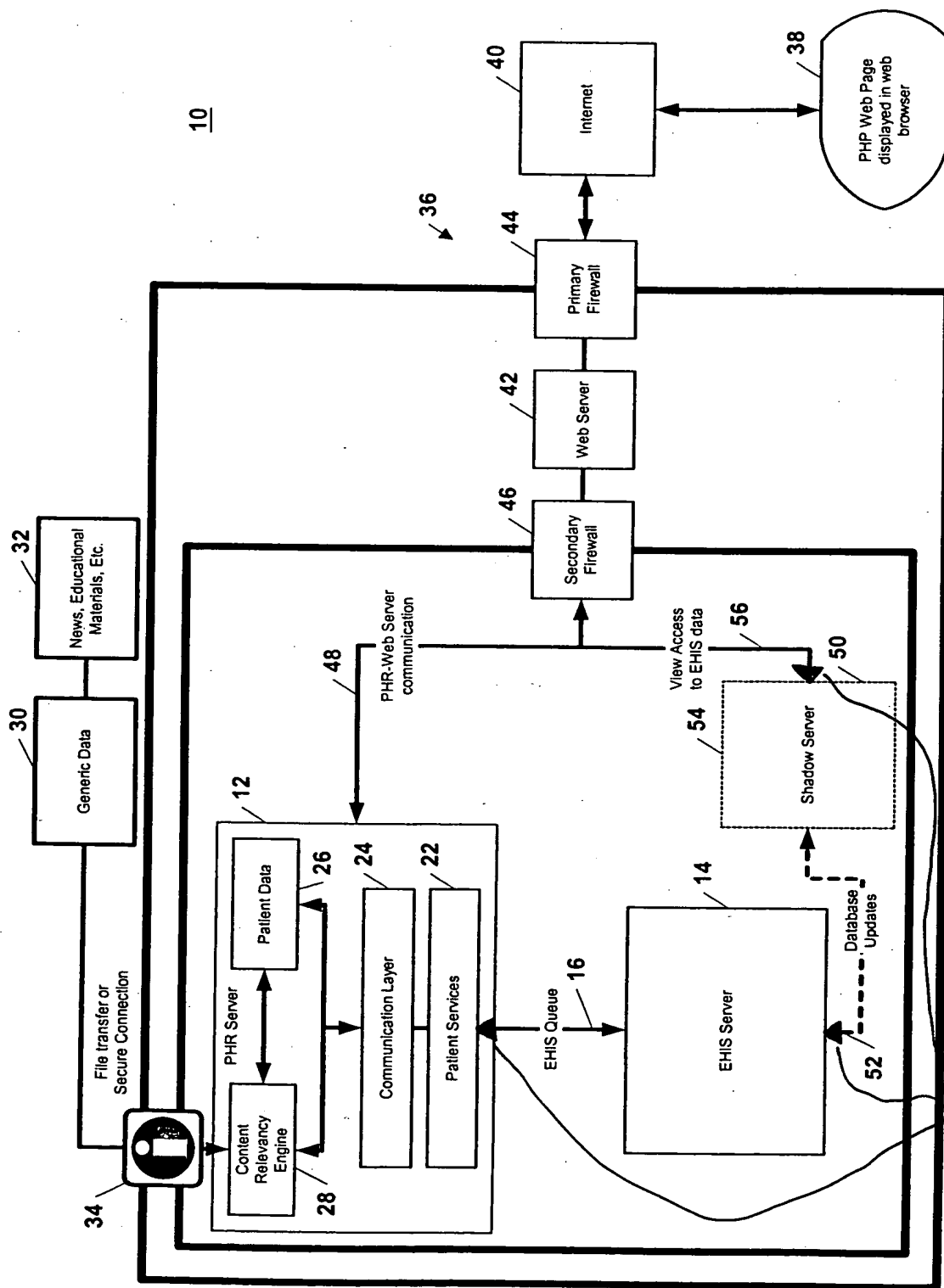


Figure 1